

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MATTHEW CATANZARO and
MICHAEL GARRISON,

No. 08-11173

Plaintiffs,

District Judge Thomas L. Ludington

v.

Magistrate Judge R. Steven Whalen

MICHIGAN DEPT. OF CORRECTIONS,

Defendant.

REPORT AND RECOMMENDATION

Before the Court is Defendants' Motion to Dismiss Plaintiff Garrison's Claims from the Complaint [Docket #63], which has been referred for a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). For the reasons set forth below, I recommend that the motion be DENIED.

I. BACKGROUND

On March 19, 2008, Plaintiff Garrison filed this civil rights complaint as co-plaintiff with Matthew Catanzaro, another inmate in the custody of the Michigan Department of Corrections. While there are other motions to dismiss, to sever, and for partial summary judgment pending, this motion is premised on an injunction issued against Plaintiff Garrison by the Honorable Robert Holmes Bell of the United States District Court for the Western District of Michigan on February 7, 2008. Judge Bell enjoined Plaintiff Garrison from "filing or participating in any civil action in this court as a co-plaintiff."¹ Citing *Leman v. Krentler-Arnold Hinge Last Co.*, 284 U.S. 448, 52 S.Ct.

¹ A copy of Judge Bell's Order of Dismissal and Permanent Injunction in *Garrison v. Michigan Dept. of Corrections*, W.D. Mich. Case No. 1:06-cv-869 is appended to

238, 76 L.Ed. 289 (1932), Defendants contend that although the injunction was issued in the Western District of Michigan, it is to be given effect in all district courts in the United States, including this Court, pursuant to the Full Faith and Credit Clause, U.S. Const., Art. IV, § 1. Defendants note that at the time of filing their motion, “[t]he injunction against Garrison [had] not been lifted,” and that “[a]llowing Garrison to continue as a co-Plaintiff in this case would violate the permanent injunction against him.” Defendants’ Brief, pp. 2-3.

II. DISCUSSION

It is unnecessary to discuss whether or not the injunction issued in the Western District of Michigan is binding on this Court under the Full Faith and Credit Clause, because on May 28, 2009, the Sixth Circuit vacated Judge Bell’s injunction. *See Michael David Garrison, et.al. v. Michigan Dept. of Corrections, et.al.*, 2009 WL 1491463 (6th Cir., 5-28-09), Sixth Cir. No. 08-1222. Defendants may or may not prevail on the other pending dispositive motions, but the sole basis for the present motion no longer exists. This motion must therefore be denied.

III. CONCLUSION

I therefore recommend that Defendants’ Motion to Dismiss Plaintiff Garrison’s Claims from the Complaint [Docket #63] be DENIED.

Any objections to this Report and Recommendation must be filed within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. §636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); *Howard v. Secretary of HHS*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947

Defendants’ motion as Exhibit A.

(6th Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Secretary of HHS*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Within ten (10) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall be not more than twenty (20) pages in length unless by motion and order such page limit is extended by the court. The response shall address specifically, and in the same order raised, each issue contained within the objections.

S/R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Dated: June 17, 2009

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on June 17, 2009.

S/G.Wilson
Judicial Assistant